IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICITON

WRIT PETITION NO.917 OF 2007

Farida Usman Kohir
D-8, Shantiniketan,
S.G. Barve Marg,
Kurla (West),
Mumbai - 400 070 .. Petitioner.

Versus

1. President/Secretary,
   Anjuman-e- Tablighul
   Islam Belgrani Road,
   Kurla (West),
   Mumbai - 400 070.

2. Principal,
   Anjuman-e- Tablighul
   Islam Belgrani Road,
   Kurla (West),
   Mumbai - 400 070.

3. The Accounts Officer
   (Education), Greater Mumbai,
   (North Zone), Chembur,
   Mumbai - 400 071.

4. Dy.Director of Education
   Mumbai Region, Charni
   Road, Mumbai - 400 004.

5. State of Maharashtra,
   through the Secretary
   of Ministry of Education
   and Employment,
   Mantralaya Annex Bldg.,
   Mumbai - 400 032. .. Respondents.

Mr.U.A. Kohir for the petitioner.

Mr.Shekhar Ingavale, AGP for the respondents.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 13TH SEPTEMBER, 2007.

ORAL JUDGMENT (Per F.I. Rebello, J.) :

1. Rule. Heard forthwith.

2. By this petition, the petitioner claims selection grade in terms of G.R. dated 2.9.1989. Under the said G.R., there were the following requirements (1) the concerned teacher should have completed 12 years in senior scale, (2) should have undergone the in service training organised by the Government, (3) Trained under graduate teacher working in the Secondary School should acquire graduation and Trained Graduate teachers should acquire post graduation qualifications, and (4) should have completed 24 years in service.

3. The Petitioner herein acquired her post graduation qualifications some time in May, 1999. The petitioner completed 24 years service in the year 2000.

4. The Government issued another G.R. dated 1.12.1999. By this G.R., in respect of other subject teachers not covered by the earlier part of the G.R., the requirement was post graduation qualification in the same faculty. In other words, if a teacher had done graduation in Arts, post

graduation had to be in Arts and similarly, in Science, as also other faculties. Admittedly, the Petitioner was a graduate in Science. The Petitioners post graduation qualifications are in Arts (languages), though at the graduation level it was science.

5. It is however the contention of the Petitioner that the G.R. dated 1.12.1999 would not be applicable as at the relevant time, the Petitioner had already obtained post graduation qualification in terms of G.R. dated 8.12.1995. Petitioner contends that acting on the G.R. of 1995, she enrolled for Post-graduation (M.A.) in Urdu and she obtained her post-graduation qualification before the G.R. was amended. Petitioner submitted that the Respondents are estopped from denying the selection grade to the Petitioner. The learned counsel relies on the judgment in the case of Union of India V/s. M/s.J.K. Industries Ltd. [AIR 1991 Rajasthan 45] on the doctrine of promissory estoppel, contended that the amended G.R. will not apply.

6. Reply has been filed on behalf of the Government. It is admitted that the petitioner had completed post-graduation qualification and also completed 24 years of service as laid down in G.R.

dated 8-12-1995. It is pointed out that subsequent G.R. dated 1.12.1999 clarifies the clause 3(c) of G.R. dated 8-12-1995. In terms of this G.R., it is made clear that the subject teacher who had post graduation in the same subject studied by the said teacher or if it is not possible, M.Ed qualification should be considered. The petitioner has done post graduation i.e. M.A. in Urdu subject which is not a subject, she has done graduation. The petitioner was required to do M.Sc in the same subject or M.Ed. if it is not possible to do regular course in M.Sc. It is, therefore, submitted that the petitioner is not entitled for the selection grade.

7. The petitioner in the petition has alleged that considering the G.R. dated 2-12-1995, she did her post graduation (M.A.) in Urdu subject with the permission of Respondent School Authorities. Since she has studied in Urdu Medium and is also teaching to Urdu Medium students, where she required to teach Science subjects through Urdu Medium and as such she opted to do post-graduation in Urdu subject which is helping her to teach the subjects. Moreover, liberty was given to chose any subject in the said G.R. dated 8-12-1995. The Petitioner has completed in Service Training between 7-6-1988 to 16-6-1988. The petitioner in terms of G.R. dated 8-12-1995 completed her post-graduation in May, 1999. The

petitioner completed 24 years qualified service in June, 2000. From these averments and reply filed on behalf of the Respondents-State, the question is whether the petitioner would be entitled to the Selection Grade. It may be mentioned that the School by their communication on 12-08-2004 had addressed a letter to the Directorate of Education that the petitioner is entitled to the selection grade. While forwarding the proposal on 12-08-2004, the School pointed out that the School Committee by Resolution had recommended selection grade to the Petitioner.

8. Will the doctrine of promissory estoppel be applicable on the facts of the present case. At the time when the petitioner joined her post graduation, G.R. of 1995 was in existence. That require the petitioner to do post graduation in any faculty. The petitioner acted on the said G.R. and she obtained her post graduation in May, 1999 in Urdu. She could not be given the selection grade on her passing post graduation, as admittedly two of the teachers who were drawing selection grade retired only on on 31-07-2003. The petitioner in May, 1999 had also not completed 24 years service. The petitioner, however has acted on the promise made by the Respondents and in fact completed her post graduation course. The law on the issue is well

settled that if a person acts on the promise made by a Public Authority including the Government, then it is not open to the Government and/or a Public Authority to deny the petitioner benefit of G.R. under which she had completed her post graduation (see) Motilal Padampath Sugar Mills V/s. State of Uttar Pradesh [AIR 1979 S.C. 621].

9. The G.R. of 1-12-1999 deals with extension of selection grade to the Special Subject Teachers. The question whether this G.R. will apply to all Assistant Teachers or only Special Teachers need not be determined by us here. Suffice it to say that the petitioner as an Assistant Teacher had done her post graduation when the G.R. of 1995 was in force. Mere fact that the G.R. was modified subsequently by itself cannot result in denying the petitioner benefit which otherwise she should have been available considering what was held out by the respondents and the petitioner acting on the same. In the light of that, we are clearly of the opinion that the petitioner would be entitled to the selection grade in terms of the communication by the School Management by that letter dated 12-08-2004, from the next date the persons holding the posts had superannuated.

10. Considering the above, we make rule absolute

in terms of prayer (a). In terms of that, we direct the respondents to grant selection grade to the petitioner from the date a post become available. This exercise to be completed within 8 weeks. The arrears to be paid within 16 weeks of grant of the selection grade.

11. Rule is made absolute accordingly. However, there shall be no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)